

TO: Assessing Officers  
FROM: State Tax Commission

STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

ADULT FOSTER CARE FACILITIES: Eligibility for tax exemption  
as housing for elderly or  
handicapped persons

TAXATION: Exemption of adult foster care  
facilities housing elderly or  
handicapped persons

The Legislature has not provided tax exemptions from ad valorem  
property taxation for adult foster care family homes or small  
group homes owned and operated by nonprofit corporations or  
associations.

Opinion No. 6424

March 3, 1987

Honorable Jack Welborn  
State Senator  
The Capitol  
Lansing, Michigan 48913

You have requested my opinion on four questions  
relating to the applicability of the exemption from ad valorem  
taxation afforded housing for the elderly and the handicapped  
by MCL 211.7d; MSA 7.7(4a), to adult foster care family and  
small group homes licensed under the Adult Foster Care  
Facility Licensing Act, MCL 400.701 et seq; MSA 16.610(51) et  
seq.

Your questions are:

1. Whether the tax exemption afforded by  
MCL 211.7d; MSA 7.7(4a), is available to  
adult foster care family homes and to adult  
foster care small group homes.

2. Whether the term "residential units" as used in MCL 211.7d; MSA 7.7(4a), is considered to be a room, an apartment, or a separate structure.

3. Whether adult foster care family and small group homes must be owned and operated by nonprofit corporations or associations.

4. Whether a personal property tax exemption would be available if the facilities are found to be eligible for exemption from real property taxation.

Consideration of your questions must commence within the framework of certain well-established rules of construction of statutes granting tax exemptions. Tax exemption statutes are to be strictly construed in favor of the taxing unit. E.g., Retirement Homes of the Detroit Annual Conference of the United Methodist Church v Sylvan Twp, 416 Mich 340, 348; 330 NW2d 682 (1982). They are to be strictly construed against the property owner. Christian Reformed Church in North America v City of Grand Rapids, 104 Mich App 10, 22; 303 NW 913 (1981), lv den, 413 Mich 934 (1982), citing Michigan Baptist Homes & Development Co, 396 Mich 660; 242 NW2d 749 (1976). However, a court interpreting a tax exemption statute is not relieved of its duty to ascertain and give effect to the legislative intent. Association of Little Friends, Inc v City of Escanaba, 138 Mich App 302, 307; 360 NW2d 602 (1984), lv den, 422 Mich 979 (1985).

MCL 211.7d; MSA 7.7(4a), provides an exemption from all general property taxation for certain housing owned and

operated by a nonprofit corporation or association, and for the state to reimburse the local units for the taxes on such housing property. As originally enacted in 1966 PA 312, the housing was exempt if it consisted of eight or more residential units occupied by elderly persons sixty-two years of age and over and their spouses and the housing facility or project owned and operated by the nonprofit corporation or association was qualified, built or financed under section 202 of the national housing act of 1959, as amended.

In 1978, by means of 1978 PA 54, the Legislature amended MCL 211.7d; MSA 7.7(4a), to extend the tax exemption to housing for occupancy and use by handicapped families. As amended, the statute reads:

"(1) Housing owned and operated by a nonprofit corporation or association or by the state, any political subdivision thereof or instrumentality, for occupancy or use solely by elderly or handicapped families shall be exempt from all general property taxation by the state, city, village, or county, or by any public body or agency. For purposes of this section, housing shall be considered occupied solely by elderly or handicapped families even if 1 or more of the units is occupied by service personnel, such as a custodian or nurse.

"(2) As used in this section, 'elderly or handicapped families' means families which consist of 2 or more persons and the head of which, or his or her spouse, is 62 years of age or over or is handicapped, and includes a single person who is 62 years of age or over or is handicapped.

"(3) As used in this section, 'handicapped person' means that term as defined in section 202 of the national housing act of 1959, as amended, 12 U.S.C. 1701q.

"(4) 'Housing' means new or rehabilitated structures consisting of 8 or more residential units for occupancy and use by elderly persons, including essential contiguous land and related facilities as well as all personal property of the corporation or association used in connection with the facilities.

"(5) 'Nonprofit corporation or association' means any nonprofit corporation or association incorporated under the laws of this state not otherwise exempt from general ad valorem real and personal property taxes operating a housing facility or project qualified, built or financed under section 202 of the national housing act of 1959, as amended, 12 U.S.C. 1701q or section 236 of the national housing act as added by Public Law 90-448, 12 U.S.C. 1715z-1.

"(6) When a tax roll is placed in the hands of a city, county, village, or township treasurer for collection, and there are taxes assessed on that roll against property concerning which exemption is claimed under this section, the treasurer shall prepare a statement as recommended to form by the department of management and budget showing all descriptions for which exemptions have been claimed under this section, the names and addresses of the corporation or association entitled to the exemptions, the total amount of taxes so exempted, together with the amount of taxes assessed against the descriptions. The city, county, village, or township treasurer shall forward such statement to the department of management and budget, upon verification of which the state treasurer shall draw his warrant upon the state treasury for the total amount of tax revenues lost by a local taxing unit as a result of the nonprofit housing exemption allowed by this act as shown by the statement. The state treasurer after examination of the statement shall forward the

warrants to the city, county, village, or township treasurer.

"(7) The budget director shall estimate, as near as may be, the amount of money necessary to meet the expense of administering the provisions of this section under this act during each year, and the expense shall be met by a specific appropriation, included in the budget."

In order for a nonprofit corporation or association owning and operating housing for occupancy or use solely by elderly or handicapped families to qualify for tax exemption, the housing must consist of "8 or more residential units" for occupancy and use of elderly or handicapped families. OAG, 1985-1986, No 6385, p 364 (September 12, 1985), construed MCL 211.7d; MSA 7.7(4a), to require an eligible housing project to consist of a minimum of eight residential units for occupancy by elderly or handicapped persons in one building.

In addition, by virtue of amendment by 1978 PA 54, the nonprofit corporation or association must operate the housing facility or project "qualified, built or financed under section 202 of the national housing act of 1959, as amended, 12 U.S.C. 1701q or section 236 of the national housing act as added by Public Law 90-448, 12 U.S.C 1715z-1."

The Colorado Supreme Court, in United Presbyterian Association v Board of County Commissioners of the County of Jefferson, 448 P2d 967, 974 (Colo, 1968), described the federal program authorized under 12 USC 1701q as

"a direct loan program to provide elderly persons, including those who are physically handicapped and who have low or moderate income, with housing at substantially lower rents than available in ordinary commercial housing, because the loan carries a lower than market interest rate. 1964 U.S. Code Cong. and Adm. News, p. 3425, House Report No 1703."

The federal section 236 program enacted in Public Law 90-448 and codified as 12 USC 1715z-1 has as its purposes assistance for rental and cooperative housing for low and moderate income families in the form of periodic payments to the mortgagee on behalf of the mortgagor which would serve to reduce interest costs on a market rate project mortgage, House Report No. 1585 to accompany HR 17989. 2 US Code Cong and Adm News 2893 (1968), and to make operating subsidy payments in behalf of low income tenants to landlords required to pay increases in rentals resulting from the landlord's increased costs. Ross v Community Services, Inc, 405 F Supp 831, 835 (D Md, 1975), aff'd 544 F2d 514 (1976).

The Legislature, through enactment of 1972 PA 287, undertook the regulation of adult foster care facilities, providing supervision, assistance, protection and personal care, in addition to room and board, to adults not requiring organized, institutional medical or nursing care. § 2(b). An adult foster care facility "shall not be licensed to care for more than 6 adults of age 65 or older." § 5. Regulation of

adult foster care facilities became effective on February 1, 1975, the date administrative rules, 1979 AC, R 400.2101 et seq, promulgated by the Department of Social Services, were operative. It is noted that 1979 AC, R 409.2103(5), promulgated under 1972 PA 287, contained a definition of "group home" to mean "a facility which provides adult foster care for more than 6 but not more than 20 adults of which not more than 6 can be of age 65 or older."

The Adult Foster Care Facility Licensing Act, 1979 PA 218; MCL 400.701 et seq; MSA 16.610(51) et seq, recodified the laws regulating adult foster care facilities and repealed 1972 PA 287. MCL 400.703; MSA 16.610(53), contains certain pertinent definitions:

"(4) 'Adult foster care facility' means a governmental or nongovernmental establishment having as its principal function the receiving of adults for foster care. It includes facilities and foster care family homes for adults who are aged, emotionally disturbed, developmentally disabled, or physically handicapped who require supervision on an ongoing basis but who do not require continuous nursing care. ...."

"(5) 'Adult foster care family home' means a private residence with the approved capacity to receive 6 or fewer adults to be provided foster care for 5 or more days a week and for 2 or more consecutive weeks. The adult foster care family home licensee shall be a member of the household, and an occupant of the residence.

"(7) 'Adult foster care small group home' means an adult foster care facility with the approved capacity to receive 12 or fewer adults who shall be provided foster care."

1984 AACCS, R 400.2103, quoted previously, was amended effective September 15, 1984 to delete the definition of "group home." 1984 AACCS, R 400.2105(a), provides:

"'Living unit' means a section or distinct part of a facility which incorporates the arrangement of a family home and which at least contains a living room, bedrooms, and bathrooms for a group of residents. Central activity, food services, and dining areas are permitted."

While the question of whether adult foster care homes constitute a housing facility or project "qualified, built or financed under sections 202 and 230 of the national housing act" is one to be ultimately determined by appropriate federal authorities, nevertheless, the issue to be resolved is whether the Legislature intended adult foster care homes to be included within the ambit of MCL 211.7d; MSA 7.7(4a).

An adult foster care family home is a private residence "with the approved capacity to receive not more than six adults to be provided with foster care." MCL 400.703(5); MSA 16.610(53). Assuming the six adults in residence were sixty-two years of age or older, or handicapped, and the owner/operator were otherwise qualified under MCL 211.7d; MSA 7.7(4a), the private family



home could not qualify for the tax exemption absent eight or more residential units for occupancy and use of elderly or handicapped persons.

Because adult foster care small group homes may have an approved capacity to receive not more than twelve adults who shall be provided foster care, MCL 400.703(7); MSA 16.610(53)(7), the answer to the second part of your first question is not as readily apparent.

The principal function of an adult foster care small group home is to receive and to provide foster care to not more than twelve adults. MCL 400.703(4); MSA 16.610(53)(4). Adult persons receiving foster care in a small group home are, of course, housed in the adult foster care facility providing the care, as are elderly or handicapped persons receiving nursing home care who are housed in a facility licensed under MCL 333.20701 et seq; MSA 14.15(20701) et seq. In providing housing for elderly or handicapped adults as an incident to the provision of foster care in a small group home, the adult foster care small group home does not thereby become a housing facility or project for purpose of the tax exemption authorized by MCL 211.7d; MSA 7.7(4a), any more so than a nursing home facility by housing elderly or handicapped persons receiving nursing care become a housing facility or project for the same purpose.

It is noted that in 1976 the state had licensed 677 adult foster small group homes and presently the number licensed totals 2,550. When the Legislature amended MCL 211.7d; MSA 7.7(4a), in 1978, it must be presumed to have had knowledge of adult foster care small group homes and had it intended to include them within the ambit of the statute, it would have clearly done so.

Under the accepted canons of construction of statutory tax exemptions, the exemption afforded by MCL 211.7d; MSA 7.7(4a), clearly applies to housing facilities or projects owned and operated by nonprofit corporations or associations qualified, built, or financed under 12 USC 1701q or 12 USC 1715z-1 and occupied as housing by elderly or handicapped persons. The tax exemption clearly does not apply to adult foster care small group homes (7-12 adults) whose primary purpose is to provide care, rather than housing, for the adult who may be elderly or handicapped.

The Legislature may wish to amend MCL 211.7d; MSA 7.7(4a), to extend the tax exemption to eligible owners and operators of adult foster care small group homes, but if it does so, it should be done in a clear and unequivocal manner.

It is my opinion, in answer to your first question, that the Legislature has not provided tax exemptions from ad valorem property taxation for adult foster care family homes

or small group homes owned and operated by nonprofit corporations or associations. In light of the answer to the first question, it is unnecessary to address your remaining questions.

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